

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N.W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

TELEFAX: (202) 662-6291

TELEX: 89-593 COVING WSH

CABLE COVLING

WRITER'S DIRECT DIAL NUMBER

LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLAND
TELEPHONE: 071-495-5655
TELEFAX: 071-495-3101

BRUSSELS CORRESPONDENT OFFICE
44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE: 32-2-512-9890
TELEFAX: 32-2-502-1598

GERARD J. WALDRON*
(202) 662-5360

* MEMBER OF THE BAR OF PENNSYLVANIA
NOT ADMITTED IN THE DISTRICT OF COLUMBIA

June 14, 1995

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN 14 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

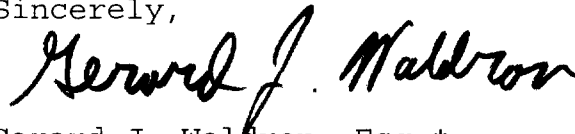
Mr. William Caton
Secretary
Federal Communications Commission
1919 M St., NW
Washington, D.C.

Re: Comments in CC Docket No. 94-54

Dear Mr. Caton:

Enclosed are the original and four copies of the
Comments of American Personal Communications in CC Docket
No. 94-54.

Sincerely,



Gerard J. Waldron, Esq.*
Attorney for
Association for Maximum Service
Television, Inc.

GJW:ja
Enclosures

No. of Copies rec'd
List ABCDE

024

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUN 14 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale)
Obligations Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

DOCKET FILE COPY ORIGINAL

COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS

Jonathan D. Blake
Gerard J. Waldron

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Post Office Box 7566
Washington, D.C. 20044
(202) 662-6000

Attorneys for American Personal
Communications

June 14, 1995

SUMMARY

The Commission now has an opportunity to promote competition, ensure consumer choice, and facilitate a national seamless network. The Commission should use its authority to ensure that private agreements are in the public interest.

First, the Commission can rely on local exchange carriers as the hub in its "network of networks," but the Commission must acknowledge that this "virtual interconnection" policy invites anticompetitive behavior by a LEC affiliated with a CMRS provider. The best way to guard against this kind of activity, and other use of a dominant position, is to 1) ensure that LEC services are not overpriced by inclusion of extra charges, and 2) require mutual compensation.

Second, the Commission should recognize roaming services as a common carrier service, and subject it to nondiscrimination and other common carrier requirements. In addition, the Commission should make certain that all CMRS providers have an obligation to provide roaming to PCS users when roaming is technically feasible.

Third, if the Commission decides to impose resale requirements on PCS providers, the Commission must recognize the nature of a PCS system at launch. During the first 12 months, a period of the "shake down cruise," APC and other start-up licensees must be able to control completely the quality of its systems and the handsets that use those systems in order to manage the quality and integrity of the systems and to avoid interference.

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
I. CMRS TO CMRS INTERCONNECTION	1
A. Interconnection is Fundamental to Promoting a Seamless National Network.	1
B. Mutual and Reciprocal Compensation Requirement Will Help Spur <u>Private</u> Negotiations That Are in <u>Public</u> Interest	5
II. DUAL MODE, DUAL FREQUENCY PCS/CELLULAR ROAMING IS ESSENTIAL TO THE EARLY SUCCESS OF PCS	7
III. RESALE	9
A. If Commission Decides to Impose Resale Requirements, Those Require- ments Must Not Interfere With Launch of PCS Systems	9
B. There is no Policy Justification for Adopting the Reseller Switch Proposal, and Unbundling is Inappropriate and Unjustified.	10
V. CONCLUSION	12

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Interconnection and Resale) CC Docket No. 94-54
Obligations Pertaining to)
Commercial Mobile Radio Services)

COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS

American PCS, L.P. d/b/a American Personal Communications ("APC") hereby comments on the Second Notice of Proposed Rule Making in the matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54 ("Second Notice").

I. CMRS TO CMRS INTERCONNECTION

A. Interconnection is Fundamental to Promoting a Seamless National Network.

An analysis of how and whether the Commission should adopt interconnection obligations, requirements, or guidelines must begin with section 332 of the Communications Act of 1934. Section 332(c)(1)(B) states that "[u]pon reasonable request of any person providing commercial mobile services, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of

section 201 of this Act."^{1/} The Second Notice recognizes the importance of interconnection in the mobile communications environment, and confirms the critical role that Congress placed on interconnection to promote a seamless national network.^{2/} The Commission, however, concludes that it is "premature, at this stage in the development of the CMRS industry, for the Commission to impose a general interstate interconnection obligation on all CMRS providers."^{3/}

One rationale for the Commission's conclusion that mandatory interconnection is not warranted at this time is that because all CMRS end users can connect with users of any network through the landline local exchange carrier ("LEC") network, then the LEC network can serve essentially as a hub and no direct connection between CMRS providers is needed. In sketching out this scenario, the Commission is cognizant that a scheme that depends on the LEC network for what amounts to "virtual" interconnection creates the "potential . . . for CMRS providers to raise their rivals' costs by denying direct interconnection, or increasing the price of direct

^{1/} 47 U.S.C. § 332(c)(1)(B). This provision was added by the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 3122 (1993).

^{2/} See Second Notice at ¶ 28 & n. 62 (quoting H.R. Report No. 103-11, 103d Cong., 1st Sess. 261 (1993) ("The Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network.")).

^{3/} Second Notice at ¶ 29.

interconnection"4/ That is because if there are currently two providers of CMRS in a market, call them "A" and "B", and A and B have a direct connection, but both deny direct connection to new entrant C, and C depends on LEC facilities to terminate calls, then whereas a call from a subscriber on B's system to one on A's system involves a two-way transaction (B-A), a call from a subscriber on C's system to one on A's system involves a three-way transaction (C-LEC-A). This three-way transaction, without Commission intervention, is likely to be artificially more expensive for C. The result of this scenario would be decreased competition, and higher prices for consumers.

The Commission notes that a crucial factor in whether a LEC has the incentive to exploit this "potential" for discriminatory behavior is "the share of the rival's traffic that terminated with the [LEC-affiliated] CMRS provider."<5/ The Commission then indicates that it thinks this kind of behavior would not make rational economic sense, "unless considerable difference exists in market shares among CMRS firms."6/

APC believes that considerable differences will exist in market shares among CMRS firms as the PCS industry is launched. For example, when APC becomes operational in the

4/ Id. at ¶ 32.

5/ Id. at ¶ 32.

6/ Id. at ¶ 32 (emphasis supplied).

Washington-Baltimore area later this year, Bell Atlantic and Cellular One will have some 600,000 customers, and APC will have zero. When APC seeks to negotiate interconnection agreements with Bell Atlantic and other LECs, APC will have zero customers, and Bell Atlantic Mobile Services will have hundreds of thousands. Consequently, considerable differences in market shares will be present at the most critical time -- when the first interconnection agreements are being negotiated.

The Commission ultimately concludes that it will depend upon "the informed business judgment of the CMRS providers and to the competitive forces of the CMRS marketplace" for CMRS to CMRS connections.^{2/} This conclusion causes concern for a company such as APC, which is facing exactly the kind of circumstance the Commission acknowledges presents a potential problem -- engaging in private negotiations with a LEC that has a cellular affiliate with a large, entrenched customer base and, at least for the first few years, the flow of traffic can be expected to be in the LECs' favor.

To ensure that the LEC does not use its market power position in these private negotiations, the FCC should at least require that C-LEC-A interconnection is not burdened by carrier common line charges and local switching charges. Instead, the "C" carrier should pay transport charges only.

^{2/} Id. at ¶ 2.

If the Commission looks to the LEC to provide CMRS to CMRS connections, it must make sure that the LEC does not over-price its service.

In addition, the Commission can facilitate private negotiations, and promote both competition and the goal of interconnection and a "network of networks," by mandating that all interconnection agreements should include a term and condition providing for mutual and reciprocal compensation between interconnecting carriers.

B. Mutual Compensation Requirement Will Help Spur Private Negotiations That are in Public Interest.

The Commission should take the opportunity, as new companies enter the CMRS marketplace, to set the rules that will guide the industry for years to come, and to establish rules that promote private agreements that are in the public interest. APC believes the Commission should use this opportunity to avoid the current regime in cellular, where mutual compensation between interconnecting carriers is generally not offered. One reason why mutual compensation is not in place today is because of the volume split of traffic, which is approximately 9-1 in favor of mobile calls terminating on a landline network. But PCS companies will change that environment, for a number of reasons: longer battery life, lower prices, greater percentage of hand-held units, and consumer-oriented services. In addition, the potential for calling-party-pays could transform all CMRS

usage. As a result, APC expects that within the first year the ratio of mobile calls terminating on a landline network will be 60-40. However, due to the experience of cellular, LECs are reluctant to make changes in the PCS interconnection agreements now being negotiated.

For this reason, APC asserts that the Commission should require that all interconnection agreements include a term and condition that provides for mutual compensation between LECs and CMRS providers, as well as between CMRS providers. This requirement would advance the public interest by promoting sound interconnection agreements, and a network of networks, but would not involve the Commission in imposing detailed and specific interconnection obligations.

More significantly, mutual compensation acts as a safeguard to ensure that the interconnection agreements between a new entrant and a LEC, and between CMRS providers, are balanced and fair. To the extent that the Commission depends on the LEC for its "virtual interconnection" policy, it means a CMRS provider has a greater reliance on the LEC. If there is a substantial differential in market share between the LEC-affiliated CMRS provider and a new entrant, which APC expects to be the case for at least the first few years, then the Commission must include safeguards to prevent the LEC and its CMRS affiliate from having the incentive to exploit this potential advantage. One way the Commission could achieve this goal would be to impose interconnection requirements on

CMRS-to-CMRS, but, for a number of valid reasons, the Commission indicates that is not its inclination. But the Commission cannot abdicate its responsibility altogether, or else the private agreements that are negotiated may not be in the public interest, since the strong potential exists for anticompetitive behavior. One simple way, not foolproof but helpful, to guard against such behavior is to mandate mutual and reciprocal compensation between interconnecting carriers. In that way, one form of anticompetitive behavior will be denied, and interconnection agreements that advance the public interest will be more likely.

**II. DUAL MODE, DUAL FREQUENCY PCS/CELLULAR ROAMING
IS ESSENTIAL TO THE EARLY SUCCESS OF PCS**

When PCS companies across the country start offering service, beginning in late 1995 and continuing through 1996, they will confront a marketplace that already has two cellular companies, each of which has access to nationwide roaming capabilities. In order for PCS providers to compete with entrenched cellular providers, PCS companies must have the ability, when technically feasible, to offer access to roaming capabilities. Clearly, cellular companies have no incentive to permit PCS providers to access their roaming capability, since this roaming capability could be a distinguishing feature of cellular service. Consequently, APC asserts that the Commission must recognize roaming for what it is -- a

common carrier service -- and therefore subject it to nondiscrimination requirements.

Roaming meets the statutory definition of "commercial mobile service" since it is a mobile service provided for profit to the public or such classes of eligible users as to be effectively available to a substantial portion of the public.^{8/} Indeed, this was the conclusion the Commission reached.^{9/} Consequently, when a CMRS provider makes roaming available to any person, that provider must make roaming available to all persons, on reasonable terms, conditions, and price.

To make roaming effective for all CMRS providers, APC urges the Commission to establish rules that promote roaming by use of dual mode, dual frequency PCS/cellular handsets. These handsets, which APC expects to be available in the second quarter of 1996, will be capable of transmitting and receiving PCS service, operating at 1900 MHz, along with cellular service, operating at 800 MHz. Note that APC and other PCS providers are not asking 800 MHz cellular companies to make technical changes to their network, but rather PCS companies would be required to make such roaming technically feasible. But having met that obligation, Commission rules

^{8/} 47 U.S.C. 332(d)(1).

^{9/} In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, released March 17, 1994, at ¶¶ 43, 66-68, 102-03, and 121-22.

must ensure that an Advanced Mobile Phone Service (AMPS) provider that offers roaming to other CMRS providers must provide roaming services to PCS licensees on reasonable terms and conditions. The Commission must establish clearly that it would be a violation of Commission rules and the obligations of a common carrier for an AMPS provider to deny roaming to a PCS subscriber once roaming is technically feasible.

III. RESALE

A. If Commission Decides to Impose Resale Requirements, Those Requirements Must Not Interfere With Launch of PCS Systems.

When APC and other PCS providers begin to operate their systems, they are not only starting a business, they are launching an entire new technology. This technology will face many obstacles, including accommodating the existing microwave users which will still be operating in the 1900 MHz band. Consequently, it is critical for APC and other PCS providers, as Commission licensees, to control use of their networks in the crucial first year to make certain that the technology operates according to plan. APC is concerned that if the Commission adopts rules on resale, and that if such rules are effective immediately, then APC would not have complete control of its network during the critical first stage, and this could endanger operation of the APC system as well as current microwave users.

APC has established a handset certification process to ensure that all handsets used by APC subscribers meet the system qualifications for efficient and effective use of APC's spectrum. For APC, as for other PCS providers, control of handsets is critical to ensure the integrity of the system, since microwave users will continue to operate in the band, and their service must not suffer interference. Consequently, in order to fulfill its duties as a licensee, APC must have some control of handsets used by resellers. But APC can not have a certification program in place if the Commission's rules on resale are effective immediately. Put simply, there is no mechanism now for terminal certification for resellers, and that must be in place before resale can be authorized.

In addition, APC must emphasize that when new PCS systems are launched, the technology that is deployed, like all new technology on a maiden voyage, will be subject to adjustment and calibration at first. It will take time for the system to go through its "shake-down cruise." During this crucial period, at least the first 12 months, APC must be able to control the use and quality of its system. During this "shake-down cruise," APC cannot tolerate endangering full control of its system due to uncertified handsets, nor can it tolerate interference with existing microwave users and other PCS providers. Consequently, APC urges the Commission to impose resale requirements only after an initial start-up period of at least 12 months has been completed. At that

time, APC will be in a position to handle reasonable requests for resale at terms and conditions that the Commission indicates it would find reasonable.^{10/}

B. There is no Policy Justification for Adopting the Reseller Switch Proposal, and Unbundling is Inappropriate and Unjustified.

If the Commission adopts a requirement that would impose on APC, a start-up company seeking to compete with the incumbent cellular providers, the requirement that it must provide complete unbundled access to its network, then APC would have to reassess its plans to begin offering services by the end of the year. APC's current customer service system and information technology structure simply could not support the kind of intrusive disruption into its network that this new obligation would require. If APC had to implement the technology that this proposal would require, then APC would be delayed in turning on its system.

This proposal also reflects a misconception, or misunderstanding, of the technically sophisticated radio frequency system that resides in a CMRS network. The kind of unbundling that resellers seek can be found in landline communications, but those concepts cannot be easily transferred to CMRS. The reason is that a call made using a landline service is a discrete transaction, such that it can be switched to the facilities of a co-located entity without

^{10/} See Second Notice at ¶ 85.

interfering with the integrity of the communication. That cannot be said for a call using a CMRS provider. In CMRS, a sophisticated integrated radio frequency system manages the hand-off of a single call. The CMRS provider's switch must retain control of the call to manage hand-off from one base station to another. This hand-off responsibility to communicate in a real-time basis with base stations in a particular area cannot be turned over to some co-located facility. Consequently, the requested unbundling would interfere with the efficient handling of a CMRS communication.

More fundamentally, however, APC urges the Commission to reject this proposal since it sends the wrong signal to companies such as APC which have risked millions of dollars to develop PCS, and which are risking hundreds of millions of dollars more to construct a PCS network. This proposal would negate much of the value of the investment APC is making at this moment. The Commission should reject this proposal, since federal regulations should not be used as a substitute for investment in technology and infrastructure.


V. CONCLUSION

For the reasons stated here, the Commission should ensure LEC charges to CMRS provider are fairly priced, should impose a mutual and reciprocal compensation requirement on interconnecting carriers, should require roaming for all CMRS

providers when technically feasible, and should time resale requirements so as not to interfere with the smooth launch of PCS. APC believes that these rules are necessary for the economic viability of PCS as a meaningful competitor in the CMRS market.

Respectfully submitted,

AMERICAN PERSONAL COMMUNICATIONS

By: 
Jonathan D. Blake
Gerard J. Waldron

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Post Office Box 7566
Washington, D.C. 20044
(202) 662-6000

Its Attorneys

June 14, 1995